

*James Thwaites*, Appellant.

*John Deye*, Gent. and } Respondents.  
*Frances* his Wife, }

The CASE of the RESPONDENTS;  
and of the Lady *Bridgman*, a Mortgagee  
for 2000 *l.* lent to the Respondents upon  
the Estate in Question.

11 & 12 Decemb.  
1678.

**B**Y-Indentures of Lease and Release, *William Thwaites* Esq; conveys the Mannor of *Barnes Ruthyn*, with the Appurtenances, in the County of *Essex*, to *Isaac Heath* and *James Feasy*, and their Heirs, to the Use of himself and *Frances* his Wife for their Lives, Remainder to *Thomas* his Second Son, and the Respondent *Frances* his Eldest Daughter, and their Heirs.

The said *Thomas* died without Issue, and *William Thwaites* and his said Wife being dead, the Respondent *Frances* became intitled to the said Estate by vertue of the said Settlement, and afterwards intermarried with the Respondent *John Deye*.

Trin. Term 1682.

The Respondents (finding the Deed of Settlement to be razed after the Sealing thereof, and the Name of the Appellant *James Thwaites* inserted, instead of the Name of the Respondent *Frances*) did Exhibit their Bill into the Court of Exchequer against the Appellant, and *James Strut* his Guardian, and the said *Isaac Heath*, (who had the keeping of the said Settlement,) to discover the said Razure, and to be Relieved against the said Ill practice.

The said *Strut* and *Heath* (as to the Discovery of the said Razure, and by whom it was done) instead of answering, demurred, hoping thereby to conceal the same.

7 May, 1683.

The Cause was heard, and a Tryal was directed to be had at the Bar of the said Court upon this Issue; Whether the said Settlement had been razed or altered since the Execution thereof by the said *William Thwaites*, or not?

15 June, 1683.

The said Cause was Tried ~~at Bar~~ by a Special Jury; and upon full Evidence the Jury gave in their Verdict, That the said Settlement was Razed after the same was Sealed by the said *William Thwaites*.

18. June, 1683.

The Court of Exchequer (upon the said Verdict) decreed the said Estate unto the Respondent *John Deye* and *Frances* his said Wife, and her Heirs; after which Verdict and Decree the Respondents continued in quiet Possession of the said Estate for several Years.

The Respondents (wanting Money, and being in Possession under the said Verdict and Decree) mortgaged the said Estate for 2000 *l.* to Mr. *Cratford* and Others, Trustees for the said Lady *Bridgman*.

December 1689.

The Appellant (being then come of Age) brought his Appeal to Reverse the said Decree.

25 April, 1690.

Upon hearing the said Appeal, your Lordships were pleased to open the said Decree, so far as to give the Appellant liberty of having a new Tryal at Law, if he should think fit.

After this leave given to the Appellant to have such a new Tryal, the Appellant never stirred, and therefore (after Eight years time) viz. in April 1698, the Respondents and the said Lady *Bridgman* applied to your Lordships to discharge the said Order of 25. April 1690; because the Appellant had never thought fit to Try the said Cause again, as by the said Order was intended.

23. May, 1698.

Upon hearing the said Petition, and the Petition and Answer of *Dorothy*, the Wife of the Appellant (who was then in *India*) and of their Children, your Lordships did Order, That a Tryal should be had upon the old Issue within one year then next, and that after such Tryal had, either Party might resort back to your Lordships again.

Since which Order, neither the Appellant, nor any on his behalf, or on the behalf of his said Wife and Children, have stirred to Try the said Cause according to the said Order.

That the Respondents are thereby like to be ruined, and the Lady *Bridgman* in danger of losing her Money and the Estate wasted.

Therefore the said Respondents, and the Lady *Bridgman*, do humbly pray your Lordships to affirm the said Decree of the Court of Exchequer.

N. Wright.